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February 15, 1996

Via Courier

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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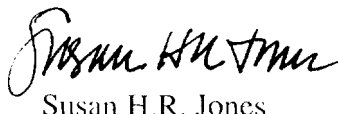
**Re: Comments in PR Docket No. 93-144 (RM-8117, RM-8030, RM-8029);
GN Docket No. 93-252; PP Docket 93-253**

Dear Mr. Caton:

Transmitted herewith, on behalf of Pittencrieff Communications, Inc., is an original and four (4) copies of its Comments, submitted in response to the Commission's Further Notice of Proposed Rule Making, In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band. A copy of this pleading has been served on each of the Commissioners, and on the Chief, Wireless Telecommunications Bureau.

If any questions should arise related to this matter, kindly contact the undersigned counsel at the direct line noted above.

Sincerely,



Susan H.R. Jones

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate)	RM-8117, RM-8030
Future Development of SMR Systems)	RM-8029
in the 800 MHz Frequency Band)	
)	
Implementation of Sections 3(n) and 322)	GN Docket No. 93-252
of the Communications Act)	
Regulatory Treatment of Mobile Services)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act --)	
Competitive Bidding)	

COMMENTS OF

PITTENCRIEFF COMMUNICATIONS, INC.

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Its Attorneys

February 15, 1996

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Summary

Pittencrieff Communications, Inc. (“PCI”) is leading provider of specialized mobile radio (“SMR”) services in the United States with approximately 93,000 subscriber units in a service footprint which contains approximately 29 million people. In this proceeding, the Commission seeks to adopt regulations which will likely have a broad impact upon PCI. Accordingly, PCI welcomes this opportunity to participate.

PCI supports the Commission’s proposal to permit disaggregation and partitioning of Economic Area (“EA”) licenses. PCI proposes, however, that the Commission not limit relocation negotiations to require that all affected EA licensees and the relevant incumbent reach a simultaneous agreement. PCI proposes instead that the first EA licensee to reach an agreement with the incumbent should be permitted to “step in the shoes” of the incumbent and continue negotiating with the remaining EA licensees. With respect to re-tuning, PCI seeks clarification of the proposed definition of “comparable facilities,” noting that ambiguity in the definition leads to inherent ambiguity in an EA licensee’s obligations.

PCI opposes the use of competitive bidding as the sole mechanism for licensing in the lower 80 and General Category channels. Because of existing licensing and use of these channels, PCI proposes alternative licensing procedures which would permit lower channel licensees to obtain EA licenses. Licensing the lower channels according to PCI’s proposal would result in efficient and fair licensing, while accounting for the high population of incumbents already licensed for the channels.

Finally, PCI opposes the Commission's proposals to limit participants in the competitive bidding for the lower 80 and General Category channels. If such restrictions are adopted, incumbent licensees, such as PCI, would be barred from participating in the auctions.

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COMMENTS OF

PITTENCRIEFF COMMUNICATIONS, INC.

Pittencrieff Communications, Inc. ("PCI"), by its attorneys and pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. S 1.415, hereby submits its Comments in response to the Commission's Second Further Notice of Proposed Rule Making ("FNPRM") in the above-referenced proceeding.¹ The FNPRM is part of the Commission's broader efforts to develop new rules governing the provision of 800 MHz specialized mobile radio ("SMR") service. The Commission already established service and auction rules for the "upper" 200 channels in the 800 MHz band dedicated for SMR use. The FNPRM seeks to adopt regulations governing the

¹ Report and Order, *In the Matter Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, FCC 95-105 (released December 15, 1995). On January 16, 1996, the FCC released an Order extending the deadline for the submission of comments and reply comments until February 15 and March 1, respectively (DA 96-18).

“retuning” of licensees currently authorized in the upper 200 channels who may be displaced as a result of the auction of that spectrum. The FNPRM is also designed to develop rules to govern the use of the 150 channels in the 800 MHz band now designated for use in the General Category and the remaining 80 channels in the 800 MHz band designated for SMR use (the “lower 80” channels).

I. INTRODUCTION

PCI is a leading provider of SMR services in the United States with approximately 93,000 subscriber units in service in a footprint containing approximately 29 million people. The Company serves SMR customers on approximately 4,300 800 MHz SMR channels providing coverage in Texas, New Mexico, Oklahoma, Arizona, Colorado, North Dakota and South Dakota. As a provider of 800 MHz specialized mobile radio (“SMR”) services throughout the southwestern and western portions of the United States, the rules and regulations proposed by the FCC in this FNPRM will have a direct impact upon PCI’s operations. Accordingly, PCI is pleased to have this opportunity to participate in this proceeding.

II. COMMENTS

A. Disaggregation and Partitioning of Channel Blocks on the Upper 200 Channels of 800 MHz SMR Spectrum.

The FCC proposes to permit Economic Area (“EA”) licensees in the upper 10 MHz of SMR spectrum to disaggregate their spectrum, or “sublicense” blocks of spectrum to an independent entity. The Commission also proposes to allow geographic partitioning of licenses either before or after the 800 MHz auction occurs. PCI agrees that such flexibility will allow EA licensees to manage and their spectrum more efficiently. Disaggregation and partitioning will

serve the public interest by encouraging the full use of spectrum that might otherwise be underused.

The Commission inquires as to the conditions under which disaggregation and partitioning should occur. EA licensees should not be required to retain any specific amount of spectrum or geography in order to disaggregate or partition. However, the EA licensee must ultimately be responsible for meeting the construction and coverage requirements for the entire EA. Accordingly, there should be no independent coverage or construction requirements for disaggregated or partitioned licenses. Otherwise, the Commission might be in the position of constantly relicensing “odd lot” geography and channel blocks. Under PCI’s recommendation, therefore, disaggregation and partitioning would likely only occur in instances when the EA licensee could otherwise comfortably meet the coverage requirements with spectrum and geography for which it remained licensed. Under these circumstances, partitioned and disaggregated licensees would be able to use the EA licensee’s spectrum intensely by serving customers the EA licensee would not otherwise serve.

B. Mandatory Relocation in the Upper 200 Channels.

The Commission proposes a series of mechanisms that would facilitate the voluntary and mandatory relocation of entities from the upper 800 MHz channels to the General Category and lower 80 channels. Those mechanisms are designed to address the distribution of relocation costs among EA licensees; the costs that an EA licensee should be expected to bear in the relocation process; the type of facilities an incumbent licensee can expect after relocation; and conduct during the mandatory relocation period.

1. *Distribution of Relocation Costs*

In the First Report and Order in this proceeding, the Commission stated that an incumbent licensee, subject to relocation by several EA licensees, may compel all EA licensees to initiate negotiations to reach a collective agreement with the incumbent regarding relocation to “comparable facilities.”² The purpose of providing the incumbent with this capability is to allow the incumbent licensee to avoid undergoing the retuning process more than once. The Commission asserts that coordinated negotiation among all affected EA licensees and the incumbent will facilitate the fair and efficient apportionment of relocation costs among affected EA licensees. In the FNPRM, the Commission reiterates its belief in the simplicity of coordinated negotiations between the incumbent licensee and all affected EA licensees, and the subsequent benefit of simple *pro rata* division of costs among affected EA licensees. (*FNPRM*, at ¶ 269.)

PCI believes that EA licensees should begin to negotiate promptly with one another concerning the retuning of incumbent licensees. Where there is an agreement among EA licensees as to the means by which incumbent licensees should be retuned, PCI expects that, each EA licensee would be required to pay a *pro rata* share of cost to retune the licensee, based upon the number of channels each EA licensee holds as a result of the auction. As a practical business matter, however, it may not always be possible to unify all affected EA licensees on a negotiating position. More importantly, some EA licensees may wish to proceed more expeditiously with negotiations and subsequent retuning than may others. An EA licensee who is capable of reaching a satisfactory agreement with an incumbent early in the negotiations might be required to delay relocation of the incumbent, if it cannot produce agreement among all EA licensees.

² Id. at ¶ 78.

This delay would hurt EA licensees who wish to proceed more quickly with the retuning process. Conversely, forcing all EA licensees to agree in a compressed time frame would hurt EA licensees not yet prepared to agree on a relocation plan. Accordingly, the rules should provide mechanisms which would permit EA licensees to reach an independent agreement with the incumbent and to proceed in relocating and retuning efforts in the event that all affected EA licensees are unable to reach a unified agreement with the incumbent. At the same time, however, PCI does not propose that an incumbent licensee be subject to more than one relocation and re-tuning.

Accordingly, PCI proposes that the Commission add to its negotiation provisions, the opportunity for the first EA licensee to reach an agreement with the incumbent and “step in the shoes” of the incumbent to continue negotiations with the remaining EA licensees. Because incumbent licensees could only be required to retune their facilities one time, this option would only be available to EA licensees that would be able to retune an incumbent from all the upper 200 channels for which it is licensed. The first EA licensee would re-locate and re-tune the incumbent for all of the upper 200 channels, and retain the remaining incumbent channels if and until an agreement was reached with the remaining EA licensees. If the other EA licensees are unable to retune the first EA licensee, the first EA licensee simply retains the use of the incumbent’s channels. If subsequent EA licensees are able, through a voluntary or mandatory arrangement, to retune the first EA licensee, the first EA licensee’s rights would be equal to those of the incumbent licensee. The subsequent EA licensees would only, therefore, be required to compensate the first EA licensee for the actual cost of retuning that first EA licensee from the channels it secured from the original incumbent. This method should produce no questions

concerning premium payments by the first EA licensee to the incumbent. This approach allows an EA licensee anxious to begin the relocation process to proceed, but does not place subsequent EA licensees at the mercy of the transaction between that initial EA licensee and the incumbent. Nor are subsequent EA licensees penalized by foregoing their opportunity to utilize the retuning option merely because they disagree with the timing proposed by the first EA licensee.

This option has several advantages over the Commission's proposal. Notably, it provides an adequate resolution in the event of a break-down in negotiations among EA licensees by allowing the EA licensee in a position to proceed to do so. The plan also permits other EA licensees the benefit of the full retuning period to obtain the channels it secured during an auction. It also establishes a mechanism which ensures that EA services will be made available to the public without delay. In addition, PCI's proposal provides assurance that an incumbent licensee with channels obtained by multiple EA licensees will be re-tuned only once, rather than be re-tuned on a gradual or piece-meal basis, as agreements are reached with each EA licensee. Finally, the Commission's requirements regarding "good faith" negotiations adequately protect the remaining EA licensees as they enter into discussions with the initial EA licensee, now negotiating from the incumbent's position.

2. Re-tuning Issues / Comparable Facilities

The Commission proposes that, in relocating an incumbent, an EA licensee must ensure that an incumbent licensee be authorized for "comparable facilities" which provide, at a minimum, "the same level of service as the incumbents' existing facilities." (FNPRM, at ¶ 283.) The FCC defines "comparable facilities" as the assurance that an incumbent's relocated and re-tuned system will: (a) receive the same number of channels with the same bandwidth; (b) have

its entire system relocated, not just those frequencies desired by a particular EA licensee; and (c) once relocated, have a 40 dBu service contour that encompasses all of the territory covered by the 40 dBu contour of its original system. (*Id.*).

PCI recommends that the Commission adopt a more precise definition of the “entire system” that EA licensees will be obligated to retune. PCI recognizes that SMR licensees may operate “systems” comprised of more than one base station facility. Accordingly, it recommends that an EA licensee be obligated to relocate all base stations within the EA. However, it should not be required to retune facilities outside the EA for several reasons. First, the obligation to retune base stations in neighboring EAs should properly be the responsibility of the EA licensees in that location. Second, taken to its logical extreme, an incumbent licensee could assert that its “system” is comprised of base stations over a multi-EA, multi-state or even nationwide area. It cannot be the responsibility of one EA licensee to retune all base stations in a “system.” Moreover, a licensee should not be able to claim that a system is comprised of multiple base stations, if the base stations serve different mobile units, because of, for among other reasons, equipment compatibility.

Similarly, an EA licensee should only be responsible for retuning mobile units which regularly operate on base stations within the EA. The Commission must implement safeguards to ensure that the EA licensee is not overly burdened in re-tuning mobiles associated with an “entire system” which spans beyond its EA boundaries. Specifically, an incumbent should be required to produce billing records, customer accounts, or some other reasonably sufficient documentation, to verify that the mobile units proposed for re-tuning by the incumbent are indeed directly associated with the base station within the EA that they would otherwise be

required to retune. Accordingly, if mobile units operate over multiple facilities, the base station and all associated mobile units would be considered a system. However, if a licensee operates multiple facilities in an EA that do not operate together, an auction winner should be required to retune only those facilities operating together with the channels for which it is the auction winner.

In order to clarify for the EA licensees the components of an incumbent's system, PCI recommends that, once notified by an EA licensee of the EA licensee's intention to retune the incumbent's system, the incumbent would provide the EA licensee with a listing of all base station and mobile units that comprise the system. All material exchanged between the EA licensee and the incumbent would be accorded confidential treatment.

C. Licensing of Lower 80 and General Category Channels

The Commission proposes the use of geographic licensing for the lower 80 and General Category channels. The Commission also recommends the use of EAs to define the applicable service areas for these licenses. The Commission would license the lower 80 channels in five channel blocks and requests comments on licensing General Category channels in blocks of 120, 20 and 10 channels. Further, the Commission proposes using competitive bidding to license the channels. Coverage and construction requirements for the lower 80 and General Category channels would be the same as those for the upper 200 channels. However, there would be no mandatory relocation from the lower 80 and General Category frequencies.

PCI opposes the use of competitive bidding as the sole mechanism for licensing the lower 80 and General Category Channels. This spectrum, unlike 900 MHz SMR channels, is already intensely licensed throughout the country. Unlike the 800 MHz spectrum, there are no provisions

(nor should there be) for retuning incumbents from these channels. While using a geographic, rather than a site specific licensing scheme for the lower 80 and General Category channels would accomplish laudable administrative goals, the employment of auctions would prove unproductive.

Instead, PCI recommends that after the conclusion of the licensing process for the upper 200 channels (including the voluntary period for retuning incumbent licensees), the Commission afford all licensees in the lower 80 and General Category channels an opportunity to secure an EA license through the application process. Applicants would be required to show either that: 1) they are the only licensee on the requested channel(s) in the EA; or 2) concurrence or participation by all licensee(s) on the requested channel(s) in the EA.

Under PCI's plan, all licensed facilities would be eligible to participate in the geographic licensing program, including licensees of yet unbuilt facilities and non-SMR licensee. Like the upper 200 channels, the lower 80 and General Category channels would be eligible for partitioning. Once the application process was complete, the Commission would engage in a competitive bidding process for the remaining spectrum, unlicensed on a geographic basis. PCI presumes that this spectrum would be either: 1) not licensed at all in the relevant geographic area; or 2) licensed to multiple entities that were unable to agree upon the submission of an application under which all affected licensees would secure an EA license.

In order to retain consistency among all 800 MHz channels, PCI recommends that the auction for the remaining lower 80 and General Category channels be conducted on an EA basis. The majority of the channels in the lower 80 channels are licensed in non-contiguous blocks of five today. PCI recommends, therefore, that auctions, to the extent necessary, result in the

issuance of licenses in the same five channel groupings. The General Category channels were previously licensed on a channel by channel basis. However, these channels are contiguous. Because some applicants may value the contiguous nature of the spectrum, PCI recommends that these channels be licensed in three groups of fifty channels each. As a practical matter, the spectrum available for auction will likely be considerably less in both the 5 channel blocks in the lower 80 and 50 channel blocks in the General Category. Because these channels are heavily used today, PCI expects that licensees would take advantage of securing EA licenses for their existing channels in advance of the auction process. Accordingly, while channels may be theoretically arrayed in 5 or 50 channel groups, the actual number of channels that would be auctioned would depend on what had not already been licensed previously on an EA basis.

Because the lower 80 and General Category channels that will not be auctioned will be licensed already, there should be aggressive construction and coverage requirements. PCI recommends a construction deadline of one year and a coverage requirement equal to that applicable in the upper 200 channels. PCI expects that virtually all incumbent licensees that become EA licensees will already meet these coverage requirements. The primary effect of the construction and coverage requirements would be to promote incumbent licensees who become EA licensees to build if they have not already done so. However, for the auctioned lower 80 and General Category channels, PCI recommends construction periods and coverage requirements consistent with those applicable for the upper 200 channels. For the lower 80 and General Category channels, licensees should be able to satisfy coverage requirements by demonstrating that they have entered into a voluntary resale arrangement with an incumbent. It is likely that many of the EA licenses of channels from the lower 80 and General Category blocks will be

populated with incumbents. Arrangements with those incumbents may be the only means by which the auction winner will be able to meet the coverage requirements. However, if a licensee is unable to conclude a satisfactory resale agreement with an incumbent, the new licensee should not be able to claim coverage on those channels.

D. Competitive Bidding Issues for the Lower 80 and General Category Channels

There is likely to be a high degree of interdependence between the lower 80 and General Category channels. Accordingly, PCI recommends that they be subject to simultaneous, multiple round auctions. In the past, the Commission has required applicants to employ bid increments that are artificially high. Because of the likely limited value of the lower 80 and General Category channels, the Commission should use a minim bid increment of no more than \$0.01 per MHz/pop.

PCI is strongly opposed to limiting the class of entities eligible to bid for the use of the lower 80 and General Category channels. PCI would not qualify as a small business under the Commission's proposed definitions. Yet, PCI is the licensee of many channels in the lower 80 and General Category. It would seek to participate in the auction to secure EA based licenses for these channels (to the extent it could not secure such licenses in a pre-auction application process). To deny PCI and similarly situated entities that have been active participants in the SMR industry to continue to pursue their business strategies and offer service is contrary to sound public policy. PCI should, therefore, be allowed to fully participate in any auction for the lower 80 and General Category channels. If the question wishes to promote the use of the lower 80 and General Category channels by small businesses, PCI does not object to a restriction on the

participants in the auction, so long as incumbent licensees, regardless of their size, are able to secure EA licenses for channels on which they are now the site specific licensee.

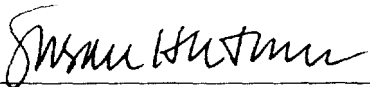
III. CONCLUSIONS

PCI fully supports the Commission's efforts to ensure fair and efficient relocation of incumbent licensees located in the upper 200 SMR channels in the 800 MHz band with operations within an EA. PCI urges the Commission, however, to adopt regulations which permit flexibility in the negotiation process which anticipate the difficulty of multiple parties negotiating toward a common goal and to protect EA licensees from unnecessary and overly burdensome re-tuning obligations. PCI opposes the Commission's proposal to implement competitive bidding as the sole procedure for the licensing in the lower 80 and General Category channels. Because of the high number of incumbent licensees in this spectrum, PCI believes that an alternative to auctions, which would permit incumbent licensees through traditional licensing processes to convert incumbent licenses into EA licenses, would be an efficient and appropriate licensing mechanism. PCI also opposes the Commission's proposal to restrict competitive bidding in the lower 80 and General Category channels to certain qualified entities. Given the existing licensees already licensed for those channels, limiting further licensing would be inappropriate and contrary to basic principles of fairness. PCI believes that its proposals will promote efficient relocation in the upper 200 SMR channels, facilitate fair and efficient licensing in the lower 80 and General Category channels, and will also provide adequate protections to all parties to the both procedures.

WHEREFORE, for the foregoing reasons, PCI urges the Commission to adopt regulations in accordance with the arguments and opinions expressed herein.

Respectfully submitted,

PITTENCRIEFF COMMUNICATIONS, INC.

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